

**REMARKS**

Claims 1, 3 - 14, 16 - 22, and 24 - 29 are currently pending in this case. Of these, Claims 1 and 24 are the pending independent claims. A minor clarifying amendment is made in Claim 1 to correct a grammatical deficiency. No other amendments have been made to the claims. Favorable reconsideration and allowance of all pending claims is respectfully requested in view of the following remarks.

In the Office Action, the Examiner divided the claims into two groups. The claims of Group I (Claims 1, 2-14, and 16-22) were said to be directed to a process in which the step of concentrating the fermentation medium is carried out prior to interruption of further processing in step (b). The claims of Group II (Claims 24-29) were said to be directed to a process in which concentrating the fermentation medium is carried out after further processing is interrupted in step (b). This is in error, however, since Claim 24 allows for concentration of the medium either before or after interruption of further processing in step (b).

Applicants hereby provisionally elect to prosecute the Group I claims (Claims 1, 2-14, and 16-22) in this application, but this election is made with traverse and solely for the purpose of advancing prosecution of this case. The restriction requirement is believed to be improper for at least the reason that restriction is not "required" by 35 U.S.C. §121 as suggested by the Examiner. Congress wisely gave USPTO Examiners the "discretion" to require restriction when warranted. According to 35 U.S.C. § 121 "... the Commissioner may require the application to be restricted...." (emphasis added). The MPEP § 803 list two criteria that must both be present (conjunctively) in order for restriction to be proper:

- 1) The invention in the separate claim groups must be independent or distinct; and
- 2) There must be a serious burden on the Examiner if restriction is not required (emphasis added).

Either or both of these requirements are not met here. Among other things, the subject matter of independent Claim 1 is quite obviously a subset of the subject matter of independent

Claim 24.<sup>1</sup> Claim 1 is directed to the embodiment where the fermentation medium is concentrated at least before interruption of further processing as called for in step (b). Claim 24 covers concentrating the medium either before or after interruption of further processing.<sup>2</sup> So Claim 1 is at least one embodiment of Claim 24. It is hard to see how these claim groups (the Claim 1 group claims and the Claim 24 group claims) could be said to be independent or distinct for purposes of MPEP §803.

Since independent Claims 1 and 24 and their associated dependent claims are closely related in scope, they also will entail a search of essentially the same art. At a minimum, a search of art pertaining to the subject matter of Claim 1 will entail a search of the art pertaining to the subject matter of Claim 24, and visa versa. This is clear beyond peradventure. It is difficult to see how a search of substantially the same if not the identical art for the subject matter of Claims 1 and 24 (and their respective dependents) could be said to impose any undue or “serious” burden on the Examiner.

Because the Examiner has not shown any serious burden if examination of all the claims is conducted in one proceeding and the claims cover closely related subject matter, Applicants respectfully assert that the Examiner should reconsider and withdraw the restriction requirement in this case.

In view of the foregoing, Applicants urge favorable reconsideration and allowance of Claims 1, 3 – 14, 16 – 22, and 24 - 29.

---

<sup>1</sup> Once again, the Examiner has paraphrased Claim 24 incorrectly. Claim 24 is very much like Claim 1, except the fermentation.

<sup>2</sup> Of course, Claim 24 covers concentrating the fermentation medium both before, during, and after interruption of further processing as called for in step (b).

Application No. 10/568,329  
May 13, 2009  
Response to Office Action Dated March 13, 2009

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,  
LUEDEKA, NEELY & GRAHAM, P.C.

By: /Mark S. Graham/

Mark S. Graham  
Registration No. 32,355

Date: May 13, 2009  
P.O. Box 1871  
Knoxville, Tennessee 37901  
(865) 546-4305